

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant/owner:** Brenna & Stephen Kucinski  
89 North East Street  
Amherst, MA 01002

**Date application filed with the Town Clerk:** June 4, 2010

**Nature of request:** To renew Special Permit ZBA FY2008-00031, for a flag lot, under Section 6.3 and 10.33 of the Zoning Bylaw

**Address:** 55 North East Street (Map 15A, Parcel 34, R-N Zoning District)

**Legal notice:** Published on June 23, 2010 and June 30, 2010 in the Daily Hampshire Gazette and sent to abutters on June 22, 2010

**Board members:** Eric Beal, Barbara Ford, Tom Ehrgood

**Submissions:**

- ZBA application, filed with the Town Clerk on June 4, 2010;
- A copy of ZBA FY2008-00031 filed with the Town Clerk on July 15, 2008, and a partial copy of the previously approved site plan;
- An 11x17 copy of the approved site plan, dated November 8, 2006 stamped approved on February 12, 2004.

**Site Visit:** July 7, 2010

Tom Ehrgood met Brenna & Stephen Kucinski at the site. The other Board members had viewed the site previously. The following was observed:

- The existing improved access driveway located on the east side of North East Street including a completed bridge with guardrail over a small intermittent stream;
- The location of an existing horse riding area extending partial into the access driveway;
- The location of an existing surveyor stake located at the south west corner of the flag lot and visual observation of an existing birch tree near the center of the lot;
- The location of a large barn located on the property to the south of the flag lot.

**Public Hearing:** July 8, 2010

Brenna & Stephen Kucinski were present. Ms. Kucinski stated the following:

- The request is to renew the Special Permit, ZBA FY2008-00031, for a flag lot. The original flag lot permit was issued in 2004;
- There have been no significant changes to the application or surroundings since the previous renewal and the purpose of the building lot would be for a single family house;

- The building area of the property conforms to the requirements under Section 6.3. The length of the driveway is longer than is allowed under Section 6.3, but was granted previously because there is good visibility and there is a fire hydrant on the other side of North East Street;
- The access strip is 40 feet in width in accordance with the requirements of Section 6.3;
- The buildable portion of the flag lot is capable of containing a circle whose diameter is 120 feet in accordance with the requirements of Section 6.3;
- The access way, including the intermittent stream crossing, was completed in 2007 in accordance with the order of conditions issued by the Conservation Commission;
- There are no current plans for development of the property, but wish to renew the permit to maintain the opportunity to develop the property in the future;
- The previously approved plan does show a possible arrangement and location for a single family house. Any future development of the property may be subject to change, but is required to be reviewed by the Zoning Board at a public meeting.

Mr. Ehrgood MOVED to close the evidentiary portion of the public hearing. Ms. Ford seconded the motion and the Board VOTED unanimously to close the public hearing.

**Public Meeting:**

The Board members determined that based on the plans submitted and the testimony provided that there are no changes to the property, surroundings or application. The Board members reviewed the findings under Section 6.3 and 10.38 listed in the previous Special Permit, ZBA FY2008-00031 and concluded that they remain applicable.

Mr. Beal made a MOTION to accept and adopt the findings under Section 6.3 and 10.38 as listed in the previous Special Permit, ZBA FY 2008-00031. Ms. Ford seconded the motion. The Board VOTED unanimously to accept and adopt the findings of the previous permit, as follows:

6.32 – The building area of the proposed lot is more than double that required in an R-N zoning district.

6.33 – The access strip or pole is 40.23 feet, meeting the required minimum street frontage of 40 feet. The access strip does not have a change in direction.

6.330 – The proposed flag lot is not within any overlay district and will not have a detrimental impact on any such district.

6.331 – The access strip of more than 400 feet is allowable, if it will not create an undue safety hazard. The proposed lot has good visibility and access to a fire hydrant is nearby.

6.332 – No potential substantial adverse impact on environmentally sensitive areas has been identified as a result of the proposed lot.

6.333 – The natural features of the farm and the view of the Pelham hills to the east will not be removed, destroyed or obstructed.

6.335 – There will be no known impact on historical, archeological and/or cultural resources of the area.

6.36 – There is only one flag lot proposed.

6.37 – Access to the lot is unimpeded, and can be designed to not exceed 5% grade within 50 feet of the street line, under the provisions of Bylaw Section 7.7

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 – The proposal is suitably located in a neighborhood of single family homes and open farmland. It is just north of an existing Village Center.

10.381 – The proposal will not interfere with the workings of the surrounding farmland, other residences and uses permitted by right in the same zoning district.

10.382 – As a single family residence, the proposal will not constitute a nuisance under this section.

10.383 – The proposed single family house location is removed from the road and other homes, and hence will not be an inconvenience or hazard to abutters or vehicles on North East Street.

10.384 – The proposed size of the lot and width of access strip will allow for proper operation of a residence.

10.386 – No signs are included with the proposal, and parking will be provided as shown on an approved site plan in conformance with Articles 7 and 8 of the Bylaw.

10.387 & 10.389 – The proposed driveway will provide safe vehicular and pedestrian movement within the site and in relation to adjacent streets and property, because a site plan for the house and driveway has been approved by the Board prior to a building permit being issued. In addition, permits from the Board of Health will be required for any on-site septic or water supply if the town water/sewer facilities will not be used.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw and the goals of the Master Plan in that it creates additional housing while protecting active farmland and open space. The proposal protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

#### **Public Meeting – Zoning Board Decision**

Mr. Beal moved to APPROVE the application to renew the flag lot with the same conditions as the previous Special Permit, ZBA FY2008-00031. Mr. Ehrgood seconded the motion. For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2010-00016, to renew ZBA FY2008-00031 for a flag lot, under Section 10.33 of the Zoning Bylaw, at 55 North East Street (Map 15A, Parcel 34, R-N Zoning District).

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ERIC BEAL

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BARBARA FORD

\_\_\_\_\_  
TOM EHRCOOD

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2010.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2010-00016, to renew Special Permit, ZBA FY2008-00031, for a flag lot, under Section 10.33 of the Zoning Bylaw, at 55 North East Street, (Map 15A, Parcel 34, R-N Zone) with the following conditions:

1. The petitioners shall build according to the Site Plan approved by the Board at a public meeting on November 16, 2006 and stamped approved on July 8, 2010 showing:
  - a. The final location of the house and driveway;
  - b. The final grading and drainage plan for the driveway.
2. The house shall be single family only.
3. The completed driveway shall be at least 12 feet wide with clear shoulders of two feet on either side for snow storage and shall be capable of supporting emergency vehicles.
4. This application is subject to Section 14 of the Zoning Bylaw, Phased Growth. The Zoning Board of Appeals has assigned a development authorization date of August, 2010.

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ERIC BEAL, Acting Chair  
Amherst Zoning Board of Appeals

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DATE